

AMENDMENT NUMBER ONE
TO AN AGREEMENT
BETWEEN
THE CITY OF FRISCO, TEXAS (CITY)
AND
THE TRANSTEC GROUP, INC (CONSULTANT)
FOR
PROFESSIONAL ENGINEERING SERVICES

Made as of the _____ day of _____ in the year Two Thousand Nine:

BETWEEN the City: **The City of Frisco, Texas**
6101 Frisco Square Boulevard
Frisco, Texas 75034
Telephone: (972) 292-5400
Facsimile: (972) 292-5016

and the Consultant: **The Transtec Group, Inc.**
6111 Balcones Drive
Austin, Texas 78731
Telephone: (512) 451-6233
Facsimile: (512) 451-6234

for the following Project: **Development of Pavement Design Catalog, Details, and Specifications**

The City and the Consultant agree as set forth below.

THIS AMENDMENT NUMBER ONE is made and entered by and between the **City of Frisco, Texas**, a Home-Rule Municipal Corporation, hereinafter referred to as "City," and **The Transtec Group, Inc.**, hereinafter referred to as "Consultant," to be effective from and after the date as provided herein, hereinafter referred to as "Amendment Number One."

WHEREAS, the City and Consultant desire to amend the Agreement for the purpose of extending the scope of the Project (defined in the Agreement) to include Additional Services for the completion of a design revision requested by the City;

referencing the Additional Services in relation to the Project Schedule (defined in the Agreement); revising the Consultant's Fee (defined in the Agreement) to include the provision of the Additional Services relating to design revision requested by City; revising the amount of the final payment of the Consultant's Fee (defined in the Agreement) allocated towards the completion of the Record Documents for the project; revising the percentage of Consultant's Fee (defined in the Agreement) allocated toward the completion of the requirements associated with the Texas Architectural Barriers Act (the "Barriers Act") and ensuring the City's receipt of the Notice of Substantial Compliance for the Project, issued by the Texas Department of Licensing and Regulation (the "TDLR"); referencing the Additional Services for the Project in relation to the Consultant's submission of invoices to the City for work on the Project; and referencing the Additional Services for the Project in relation to the City's ownership of the Project Documents, which agreement is incorporated herein by reference as if fully set forth herein, hereinafter referred to as "Amendment Number One;" and

WHEREAS, the City and Consultant desire to amend the Agreement as hereinafter set forth.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, the mutual benefits to be obtained hereby and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Consultant do mutually agree as follows:

1. **Additional Project Services.** City and Consultant agree that this Amendment Number One amends the Agreement for the purpose of, among other things, establishing additional Project services to be performed by Consultant, as more particularly described in the following exhibits, attached hereto and incorporated herein for all purposes:
 - a. Exhibit "H," Scope of Additional Services to Complete Design Revisions Requested by City, dated May 19, 2009.
 - b. Exhibit "I," Compensation Schedule / Project Billing / Project Budget for Additional Services to Complete Design Revisions Requested by City, dated May 19, 2009.
2. **Amendment to Agreement, Article 1, Section 1.2, Scope of Services** – Article 1, Section 1.2 of the Agreement is hereby amended as follows:
 - "1.2 **Scope of Services** – The parties agree that Consultant shall perform such services as are set forth and described in Exhibit "A," **and Exhibit "H"**, which is attached hereto and incorporated herein by reference for all purposes. The parties understand and agree that deviations or modifications to the scope of services described

in Exhibit "A," and Exhibit "H", in the form of written change orders, may be authorized from time to time by the City."

3. **Amendment to Agreement, Article 1, Section 1.3, Schedule of Work** – Article 1, Section 1.3 of the Agreement is hereby amended as follows:

"1.3 **Schedule of Work** – The Consultant agrees to commence work immediately upon the execution of this Agreement, and to proceed diligently with said work to completion as described in the Compensation Schedule / Project Billing / Project Budget attached hereto as Exhibit "B" and the Compensation Schedule / Project Billing / Project Budget for Additional Services to Complete Design Revisions Requested by City, dated May 19, 2009, attached hereto as Exhibit "I" and incorporated herein by reference for all purposes, but in no event shall the Project be completed any later than ~~October 1, 2008~~ **August 28, 2009**".

4. **Amendment to Agreement, Article 3, Section 3.1, Compensation for Consultant's Services** – Article 3, Section 3.1 of the Agreement is hereby amended as follows:

"3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services," compensation for this Project shall be on a Lump Sum and Hourly Basis, for an amount not to exceed ~~Thirty Seven Thousand One Hundred Fifty and 00/100 Dollars (\$37,150.00)~~ **Sixty Two Thousand Five Hundred Fifty and 00/100 Dollars (\$62,550.00)** ("Consultant's Fee") and shall be paid in accordance with Article 3 and the Compensation Schedule / Project Billing / Project Budget as set forth in Exhibit "B," and the Compensation Schedule / Project Billing / Project Budget for Additional Services to Complete Design Revisions Requested by City, dated May 19, 2009, as set forth in Exhibit "I"."

5. **Amendment to Agreement, Article 3, Section 3.1.1, Completion of Record Documents** – Article 3, Section 3.1.1 of the Agreement is hereby amended as follows:

"3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of the Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by the City prior to payment of the final ~~five (5.0%)~~ **two and ninety-six tenths percent (2.96%)** of the Consultant's Fee, or Four Thousand Three Hundred Nine and 00/100 Dollars (1,857.00). The electronic formatting shall be consistent with the standards established in Exhibit "C," City of Frisco Guidelines for Computer Aided **Design**

~~and Drafting~~ **Drafting and Design** ("CADD"). Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement."

6. **Amendment to Agreement, Article 3, Section 3.1.4.6, TDLR Notice of Substantial Compliance**— Article 3, Section 3.1.4.6 of the Agreement is hereby amended as follows:

"3.1.4.6 **TDLR Notice of Substantial Compliance** – TDLR shall provide a Notice of Substantial Compliance to the City after the newly constructed Project has had a satisfactory inspection, or Consultant has submitted verification of corrective modifications. City and Consultant agree that the final ~~five (5.0%)~~ **two and ninety-six tenths percent (2.96%)** of the Consultant's Fee, or Four Thousand Three Hundred Nine and 00/100 Dollars (1,857.00) of the Consultant's Fee, shall not be paid until the City is in receipt of the TDLR's Notice of Substantial Compliance for all Project components and/or phases of the Project."

7. **Amendment to Agreement, Article 3, Section 3.2, Direct Expenses** – Article 3, Section 3.2 of the Agreement is hereby amended as follows:

"3.2 **Direct Expenses** – Direct Expenses are included in the Consultant's Fee as described in Article 3.1 and include actual reasonable and necessary expenditures made by the Consultant and the Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Compensation Schedule / Project Billing / Project Budget set forth in Exhibit "B" **and the Compensation Schedule / Project Billing / Project Budget for Additional Services to Complete Design Revisions Requested by City, dated May 19, 2009, attached hereto as Exhibit "I"** and consistent with Exhibit "D," City of Frisco Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses. The Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to the City for reimbursement, and shall be responsible for the accuracy thereof. Any over-payment by the City for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment for services; provided, however this shall not be the City's sole and exclusive remedy for said over-payment."

8. **Amendment to Agreement, Article 3, Section 3.4, Invoices** – Article 3, Section 3.4 of the Agreement is hereby amended as follows:

“3.4 **Invoices** – No payment to Consultant shall be made until the Consultant tenders an invoice to the City. The Consultant shall submit monthly invoices for services rendered, based upon the actual percentage of work complete at the time the invoice is prepared, or are to be mailed to City immediately upon completion of each individual task listed in Exhibit “B,” **and Exhibit “I.”** On all submitted invoices for services rendered and work completed on a monthly basis, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Such background material shall include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices for payment shall provide a summary methodology for administrative markup and/or overhead charges.”

9. **Amendment to Agreement, Article 4, Section 4.1, Documents Property of the City** – Article 4, Section 4.1 of the Agreement is hereby amended as follows:

“4.1 **Documents Property of the City** – The Project is the property of the City, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any materials for any other purpose not relating to the Project without City’s prior written consent. City shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in Exhibit “A,” **and Exhibit “H.”** Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 8, Consultant will revise plans, data, documents, maps, and any other information as defined in Exhibit “A” **and Exhibit “H”** to reflect changes while working on the Project through the date of completion of the work, as solely determined by City, or the effective date of any earlier termination of this Agreement under Article 3 and/or Article 8, and promptly furnish the same to the City in an acceptable electronic format. All such reproductions shall be the property of the City who may use them without the Consultant’s permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project. Any reuse of the documents not relating to the Project shall be at the City’s own risk.”

10. **Amendment to Exhibit “B,” Compensation Schedule / Project Billing / Project Budget.** Exhibit “B,” Compensation Schedule / Project Billing / Project Budget is hereby amended as follows:

“...I. COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY.

MONTH, DATE, YEAR	DOLLAR AMOUNT	TASK COMPLETED
June 17, 2008 March 17, 2009	--	City Council authorizes City Manager to execute Amendment Number One; City Issues Notice to Proceed to Consultant.
June 27, 2008 March 27, 2009	--	Consultant's receipt of fully executed Amendment Number One.
January 31, 2009 July 30, 2009	\$ 20,000.00	Task Two, Development of Pavement Design Catalog and Associated Details (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
March 30, 2008 July 30, 2009	\$8,593.00	Task Three, Development and Revision of Pavement Material and Construction Specifications (Task Completed and all task-related deliverables completed as stated in Exhibit "H" and accepted by the City).

11. **Complete Agreement.** This Amendment Number One, including the exhibits attached hereto and labeled "H" through "I," both of which are incorporated herein for all purposes, constitutes the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Amendment Number One may not be amended, supplemented, and/or modified except by written agreement duly executed by both parties. Exhibits "H-I" are attached hereto and made a part of the Agreement and this Amendment Number One.

12. **Counterparts.** This Amendment Number One may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one Amendment Number One. A facsimile signature will also be deemed to constitute an original if properly executed.

13. **Controlling Agreement.** To the extent any provision contained herein conflicts with the Agreement, the provisions contained herein shall supersede such conflicting provisions contained in the Agreement.
14. **Defined Terms / Ratification of Agreement.** Any term not defined herein shall be deemed to have the meaning ascribed to it under the Agreement. Except as expressly amended hereby, all of the terms, provisions, covenants and conditions of the Agreement are hereby ratified and confirmed and shall continue in full force and effect.
15. **Authority to Execute.** The individuals executing this Amendment Number One represent and warrant that they are empowered and duly authorized to so execute this Amendment Number One on behalf of the parties they represent.
16. **Entire Agreement / Amendment Number One.** This Amendment Number One, and the Agreement embody the entire agreement by and between the parties regarding the subject matter hereof. There are no oral understandings or agreements between the parties regarding the subject matter hereof.
17. **Venue.** The Agreement and Amendment Number One shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.
18. **Assignment.** This Amendment Number One may not be assigned except as authorized in the Agreement.

IN WITNESS WHEREOF, the parties have executed this Amendment Number One to the Agreement, and caused this Amendment Number One to be effective on the latest day as reflected by the signatures below.

Effective Date: _____

CITY

City of Frisco, Texas

By: _____

George Purefoy

Title: City Manager

CONSULTANT

The Transtec Group, Inc.

By: _____

Dan K. Rozycki P.E.

Title: President

APPROVED AS TO FORM:



Abernathy, Roeder, Boyd, & Joplin, P.C.

STATE OF TEXAS:

COUNTY OF COLLIN:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **GEORGE PUREFOY**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS ____ DAY OF _____, 2009.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: _____

STATE OF TEXAS:

COUNTY OF Gravis:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **DAN K. ROZYCKI, P.E.**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 5th DAY OF May, 2009.

Letha D. Peters

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: _____

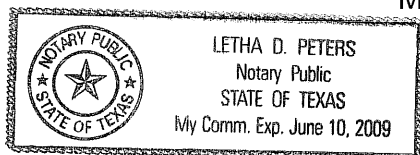


EXHIBIT "H"
SCOPE OF ADDITIONAL SERVICES
TO COMPLETE DESIGN REVISIONS REQUESTED BY CITY
DATED MAY 19, 2009

**Amendment Number One to the Agreement by and between the City of Frisco,
Texas (City) and The Transtec Group, Inc. (Consultant)**
to perform Professional Engineering Services for Pavement Design Standards

I. PROJECT DESCRIPTION

Consultant will produce Pavement Design Standards in final form that will be suitable for the City to adopt as a Standard. The deliverables will be developed based on the 1993 AASHTO pavement design and other rational methods, along with information to be provided by the City. One electronic copy (Microsoft Word format) of the deliverable will be provided to the City.

II. TASK SUMMARY, ADDITIONAL BASIC SERVICES

A. Task Four, Development of Performance Based Concrete Pavement Specifications

The objective for the City is to establish criteria which best measure the performance of concrete pavements. Roadway construction has shifted from method based specifications to performance specifications, relating desired performance attributes to materials, mix designs, and construction quality. Shifting from method specifications to performance based specifications will work as an incentive or disincentive for contractors to improve the performance of the pavements being placed.

- 4.1 Consultant will provide City with a performance based specification for concrete pavements which will meet or exceed existing criteria. The desired product will also take into account current practices established by the City and commonly used by TxDOT and other States.

B. Task Five, Development of Concrete Warranty Specification

The objective of this task is to develop a concrete warranty specification which would improve the quality of the delivered product and improve its long term durability. Use of pavement warranties is a viable method of continuing to provide a quality product without the necessity to oversee all aspects of construction. Warranty specifications are typically for a 2 to 7 year period, but may be tempered by the contractor's ability to bond. Pavement warranties typically define the level of distress which would be accepted by the owner for a specific time period and also specify the terms for contractor repairs due to failure and the condition of the pavement at the end of the warranty.

EXHIBIT "H"
SCOPE OF ADDITIONAL SERVICES
TO COMPLETE DESIGN REVISIONS REQUESTED BY CITY
DATED MAY 19, 2009

- 5.1 Consultant will develop a five (5) year warranty specification for concrete pavements, based on TxDOT and other state warranty specification language. The Consultant will also provide a brief document, outlining warranty specifications and implementation of procedures.

III. ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES.

- A. **Additional Services not included in the existing Scope of Services** – City and Consultant agree that the following services are beyond the Scope of Services described in the tasks above. However, Consultant can provide these services, if needed, upon the City's written request. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These Additional Services include the following:
1. **Scope of Services for the Project in Relation to Article 3, Section 3.1.2 of the Standard Form Agreement** - Under the Scope of Services to be performed by Consultant under this Agreement, Consultant shall not be responsible for performing Construction Administration Services.
 2. **Scope of Services for the Project in relation to Article 3, Section 3.1.4 of the Standard Form Agreement** – Relating to the Project, City and Consultant agree that at the time of the execution of the Agreement, the requirements of the Barriers Act are not applicable to the Scope of Services to be performed by Consultant under this Agreement.
 3. Quantities in excess of the amounts as stated in the Scope of Services.

IV. PROJECT LABOR ALLOCATION.

Task	Task Name	Labor Hours
TASK 4	Development of Performance Based Concrete Pavement Specifications	00
TASK 5	Development of Concrete Warranty Specification	00
<hr/>		
TOTAL		

- End of Scope of Services -

EXHIBIT "I"
**COMPENSATION SHCHEDULE / PROJECT BILLING / PROJECT BUDGET FOR
ADDITIONAL SERVICES TO COMPLETE DESIGN ADDITIONS REQUESTED BY
CITY DATED MAY 19, 2009**

**Amendment Number One to the Agreement by and between the City of Frisco,
Texas (City) and The Transtec Group, Inc. (Consultant)
to perform Professional Engineering Services for Pavement Design Standards**

I. COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY.

MONTH, DATE, YEAR	DOLLAR AMOUNT	TASK COMPLETED
May 19, 2009	--	City Council approval of Resolution authorizing the City Manager to execute Amendment Number One to the Agreement; City issued Notice to Proceed to Consultant.
May 29, 2009	--	Consultant's receipt of fully executed Agreement.
August 28, 2009	\$9,800.00	Task Four, Performance Based Concrete Pavement Specifications (Task Completed and all task-related deliverables completed as stated in Exhibit "H" and accepted by the City).
August 28, 2009	\$15,600.00	Task Five, Development of Concrete Warranty Specifications (Task Completed and all task-related deliverables completed as stated in Exhibit "H" and accepted by the City).
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TOTAL CONSULTANT'S FEE (NOT-TO-EXCEED)	\$25,400.00	

II. PROJECT BUDGET SUMMARY

A. Basic Services

1. Description of Basic Services

a. Task Four, Performance Based Concrete Pavement Specifications	\$ 9,800.00
b. Task Five, Development of Concrete Warranty	\$ 15,600.00
2. Total Basic Services (Lump Sum, Not-To-Exceed)	<u>\$ 25,400.00</u>
B. <u>Special Services.</u>	
1. Description of Special Services.	
a. Additional Construction Engineering Assistance	\$ 0.00
b. Completion of Record Documents	\$ 0.00
2. Total Special Services (Hourly, Not-To-Exceed)	<u>\$ 00.00</u>
C. <u>Direct Expenses.</u>	
1. Total Direct Expenses (included in fees above)	<u>\$ 0</u>
D. <u>Project Budget, Grand Total (Not-To-Exceed)</u>	<u>\$ 25,400.00</u>